



City of Marietta

205 Lawrence Street
Post Office Box 609
Marietta, Georgia 30061

Meeting Minutes BOARD OF ZONING APPEALS

J. K. Lowman, Ward 2, Chairman
James A. Mills, Ward 3, Vice Chairman
Susan Grant, Ward 1
G. Marshall Dye, Ward 4
Steven A. Carson, Ward 5
Vacant, Ward 6
Neil Bishop, Ward 7

Monday, March 28, 2011

6:00 PM

City Hall Council Chambers

Present: J. K. Lowman, Neil Bishop, G. Marshall Dye, Steven A. Carson,
and James A. Mills

Absent: Susan Grant

Staff:

Brian Binzer, Development Services Director
Rusty Roth, Development Services Manager
Shelby Little, Urban Planner
Daniel White, City Attorney

CALL TO ORDER:

Chairman Lowman called the meeting to order at 6:00 p.m.

MINUTES:

20110210

February 28, 2011 Regular Board of Zoning Appeals Meeting Minutes

Review and Approval of the February 28, 2011 Board of Zoning Appeals Meeting Minutes

Mr. Carson made a motion to approve the minutes seconded by Mr. Bishop.

VOTE: 5-0-0

This matter was Approved and Finalized

Absent: 1 - Board member Grant

VARIANCES:**20101377****V2011-03 Wellstar Health System 677 Church Street et al**

V2011-03 [VARIANCE] WELLSTAR HEALTH SYSTEM request variances for property located in District 16, Land Lot 10740, Parcel 0010 and being known as 677 Church Street; also in Land Lot 10750, Parcels 1190, 0320, 1110, 1120, 1130 and 1180 and being known as 675, 683, 705, 715, 737 and 741 Campbell Hill Street; also Land Lot 10750, Parcels 0590, 0630, 0470 and 1000, and being known as 320, 330 and 340 Kennestone Hospital Boulevard; also Land Lot 10750, Parcels 0840, 0760, 0400, 0810, 0390, 0410, 1200 and 0420, and being known as 504, 506, 510 512, 516, 520, 642 and 678 North Avenue; also Land Lot 10750, Parcel 0980 and being known as 31 Tower Road; also Land Lot 10750, Parcel 1060, and being known as 84 lacy Street. Variance to increase the maximum floor area ratio (FAR) from 0.75 to 1.20 and a variance to increase the maximum allowable building height from 50 ft. to 120 ft. Ward 4.

File 20101377 (V2011-03) was presented by Mr. Roth.

Mark Haney, Senior Vice President for Construction for Wellstar, made a request that this variance be tabled for an additional month.

Mr. Dye made a motion to approve the request to table item, seconded by Mr. Carson.

A motion was made by Board member G. Marshall Dye, seconded by Board member Steven A. Carson, that this matter be Tabled. The motion carried by the following vote: 5 – 0 – 0

Absent: 1 – Board member Grant

20110085**V2011-06 James Buchanan 697 Kennesaw Avenue and 840 N. Saint Mary's Lane**

V2011-06 [VARIANCE] JAMES BUCHANAN request variances for property located in Land Lot 10770, District 16, Parcels 0410 and 0170 and being known as 697 Kennesaw Avenue and 840 N. Saint Mary's Lane. Variance to increase the maximum height of a fence within a yard fronting a public street from 4 ft. to 8ft. [710.04(A.1)]; variance to increase the maximum height of a fence within a side yard between the street and the front edge of the house from 4 ft. to 8ft. [710.04(A.2)] Ward 4.

File 20110085 (V2011-06) was presented by Mr. Roth for properties located in Land Lot 10770, District 16, Parcels 0410 and 0170 and being known as 697 Kennesaw Avenue and 840 N. Saint Mary's Lane.

The applicant, James Buchanan, is requesting variances to increase the maximum height of a fence within a yard fronting a public street from 4 feet to 8 feet and a variance to increase the maximum height of a fence within a side yard between the street and front edge of the house from 4 feet to 8 feet.

Mr. Buchanan stated that his property is affected by the traffic and light generated by Kennesaw Avenue, as well as from the two commercial businesses across the street. The fence provides privacy by shielding the windows from headlights and reducing noise.

Mr. Buchanan also stated that the main debate from last month's meeting included setting a precedent with allowing a fence in a historic district. Mr. Buchanan pointed out that The Tradition already has an 8-10' brick wall surrounding the subdivision along Kennesaw Avenue, nor does he think his property is located within a historic district.

Mr. Buchanan stated that he has consulted with a landscape designer that has developed a possible plan for landscaping between the fence and sidewalk. The plans include fast growing vegetation. He has consulted with the City's Public Works Department who were accepting of the plantings encroaching on the City's right of way.

Scott Eaton, a resident of 621 St. Anne's Road, spoke in opposition of the fence because the fence doesn't conform to neighborhood or zoning standards. He also stated that traffic, noise, lights are historic conditions existing prior to the applicant's purchase – the owner should have considered these issues prior to purchase.

Patti Pearlberg, resident of 383 Church Street (Ward 4), spoke in opposition to the variance request. She presented three pages of compiled emails and comments from the neighborhood showing that the citizens of Ward 4 are overwhelmingly opposed to this fence. She stated the negative effects of fences, including a lack of aesthetics, setting precedent for future requests and being contrary to establishing a sense of community by creating walkable neighborhoods. Ms. Pearlberg urged the Board to please vote no.

Former Mayor Dunaway, residing at 619 N. Saint Mary's Lane, urged the Board to consider a compromise that would allow the property owner a fence for privacy while considering the neighborhood's desire for increased aesthetics. He also pointed out the City's funding of a similar fence just next door to the applicant's.

Rebecca Ford, residing on Heyward Circle, spoke in support of the variance request. She believes that, with the proper landscaping, the fence will be unnoticeable. If the fence is stained and planted with Leyland Cypress similar to the neighbors at the corner of Kennesaw Avenue and Saint Anne's Lane, it will provide a uniform look to Kennesaw Avenue.

Robert Brown, resident of the neighborhood, spoke in support of the fence. He likes the current fence as it is now and believes it will be an asset with the landscaping in front. He also stated that the property is not located in a historic district.

George Brown of 542 N. Saint Mary's Lane spoke in support of the fence. He stated that he understands the Buchanan's desire for privacy and that, because of the lot being below street level, it warrants a fence.

Patti Pearlberg clarified the issue regarding the location of the historic district. A few years ago a massive Kennestone area study was conducted in which the community spent weeks participating. The outcome of the study referenced the desire for a more walkable community with wide sidewalks and views of the homes.

Again, Mr. Buchanan spoke about living with the sound, light and lack of privacy but understands the community's reluctance to accept the fence. He stated he will stain the fence and properly landscape.

Mr. Dye stated that this has been a very heated topic and he has been inundated with emails and phone calls from many people.

*Mr. Dye made a motion to deny the variance request, seconded by Mr. Bishop.
VOTE: 2-3-0 (failed)*

Chairman Lowman made a motion to approve with the rationale that granting the request should not interfere with anyone walking by and will provide privacy to the homeowners without unduly harming the neighborhood. Mr. Carson seconded the motion.

Mr. Mills suggested an amendment that would limit the maximum height of the fence to 6 feet (not 8 feet), require 80% coverage of Leland Cypress between street and fence, and require the fence to be stained.

*Chairman Lowman questioned whether he wanted to dictate the species of tree. Mr. Mills thinks Leyland Cypress would be appropriate because it matches vegetation along the road. Neither Chairman Lowman nor Mr. Carson has an objection to the addition of the amendment.
VOTE: 3-2-0*

A motion was made by Board member J. K. Lowman, seconded by Board member Steven A. Carson, that this matter be Approved as Stipulated . The motion carried by the following vote: 3 – 2 – 0

Absent: 1 - Board member Grant

Vote Against: 2 - Board member Bishop, and Board member Dye

20110109

V2011-07 Bradford R. and Katharine H. Turner

V2011-07 [VARIANCE] BRADFORD R. AND KATHARINE H. TURNER

request variances for property located in Land Lot 10770, District 16, Parcel 0470 and being known as 651 St. Anne's Road. Variance to allow an 8 ft. tall wooden fence along the side yard fronting a public/private street and a variance to allow a wooden fence to be within 2 ft. of the public right-of-way. Ward 4.

File 20110109 (V2011-07) was presented by Mr. Roth for property located in Land Lot 10770, District 16, Parcel 0470 and being known as 651 St. Anne's Road.

Brad Turner, 651 St. Anne's, is requesting a variance to allow fence be located with 2 feet of the right of way and allow a fence height of 8 feet. Mr. Turner stated that when they moved to this located the side yard contained a retaining wall with dense foliage that completely obscured Kennesaw Avenue from their house. After the wall collapsed and road widening commenced, the City decided to replace the wall with a slope and an 8 foot tall fence. The height was necessary to provide privacy and blockage of light. The setback is necessary because the fence cannot be along the slope. Mr. Turner believes the cedar fence surrounded by evergreens looks great and requests the Board respect the prior commitments made by the City.

Patti Pearlberg, resident of 383 Church Street, requested the same comments presented with the previous application (V2011-06) be considered. She stated that City staff not being familiar with its own ordinance is not an excuse to simply approve a variance request.

Doug Matthews, Marietta resident, spoke in support of the variance request. The City paid for this fence twice. Reconstructing the fence a third time is not a good use of taxpayer or Mr. Turner's money. Mr. Matthews respectfully asks for the granting of these variances.

Mr. Dye states that he does not want to set a precedent based on what community has expressed to him.

Mr. Dye made a motion to deny, seconded by Mr. Bishop.
VOTE: 2-3-0 (failed)

Mr. Mills asked attorney Daniel White if a stipulation needs to be included for the existing Cypress trees if a motion to approve is made. Mr. White stated that it is up to the Board whether the trees are to be kept along with the fence.

Mr. Mills made a motion to approve both variances with a stipulation that the Cypress trees between road and fence remain. Mr. Dye asked Mr. Mills if the height needs to be the same as that approved with the previous case (6 feet). Mr. Mills stated that, because this particular fence sits lower than street level, it warrants a taller fence. Mr. Mills further stated that granting the application is necessary for the preservation and enjoyment of a substantial property right of the applicant. Chairman Lowman seconded the motion.
VOTE: 3-2-0

A motion was made by Board member James A. Mills, seconded by Board member J. K. Lowman, that this matter be Approved as Stipulated . The motion carried by the following vote: 3 – 2 – 0

Absent: 1 - Board member Grant

Vote Against: 2 - Board member Bishop, and Board member Dye

20110171**V2011-08 Eileen and Joshua Johnson 213 Maxwell Avenue**

V2011-08 [VARIANCE] EILEEN AND JOSHUA JOHNSON request variances for property located in Land Lot 12290, District 16, Parcel 0320 and being known as 213 Maxwell Avenue. Variance to allow an 8 ft. tall wooden fence along the yard fronting a public/private street, variance to allow an 8 ft. tall wooden fence along the side yard fronting a public/private street, variance to allow wooden fence to be within 2 ft. of the public right-of-way, and a variance to allow unfinished rear side of fence to show. Ward 3.

File 20110171 (V2011-08) was presented by Mr. Roth for property located in Land Lot 12290, District 16, Parcel 0320 and being known as 213 Maxwell Avenue.

Eileen Johnson requested that the variance request be tabled until next month.

Mr. Mills made a motion to table to next month, seconded by Chairman Lowman.
VOTE: 4-0-1 (Mr. Dye abstained)

A motion was made by Board member James A. Mills, seconded by Board member J. K. Lowman, that this matter be Tabled. The motion carried by the following vote: 4 – 0 – 1

Absent: 1 - Board member Grant

Abstain: 1 – Board member Dye

20110172**V2011-09 The Walker School 700 Cobb Parkway North**

V2011-09 [VARIANCE] THE WALKER SCHOOL request a variance for property located in Land Lot 10180, District 16, Parcel 0070 and being known as 700 Cobb Parkway North. Variance to allow two freestanding monument signs, less than 6 feet in height with a 24"x 54" LED changeable readerboard, be located along an internal driveway. Ward 5.

File 20110172 (V2011-09) was presented by Mr. Roth for property located in Land Lot 10180, District 16, Parcel 0070 and being known as 700 Cobb Parkway North.

Jackie Porubiansky is requesting variances to allow two freestanding signs with electronic readerboards at the Walker School. The purpose of the signs is to inform parents of upcoming events. The signs are located approximately 180 feet from the property line along Cobb Parkway North.

Chairman Lowman asked whether signs will have a moving presentation. The applicant stated that it has not been determined.

Chairman Lowman asked, since the signs are designed to catch a driver's eye and the signs will be viewable from Cobb Parkway, whether the applicant would consider a static display and how often the message would be changed. The applicant did not have a suggestion but asked the Board what would be desirable. Mr. Carson suggested once a day and the applicant stated that would not be ideal.

The applicant requested that the item be tabled until next month to determine desirable message frequency.

Mr. Carson made a motion to table the item until next month, seconded by Chairman Lowman.

VOTE: 5-0-0

A motion was made by Board member Steven A. Carson, seconded by Board member J. K. Lowman, that this matter be Tabled. The motion carried by the following vote: 5 – 0 – 0

Absent: 1 - Board member Grant

V2011-10 Nichole Williams 165 N. Fairground Street**20110173**

V2011-10 [VARIANCE] NICHOLE WILLIAMS request a variance for property located in Land Lot 12150, District 16, Parcel 1090 and being known as 165 N. Fairground Street. Variance to allow an outdoor play area for a nursery school or day care center be located in the front or side yard. Ward 5.

File 20110173 (V2011-10) was presented by Mr. Roth for property located in Land Lot 12150, District 16, Parcel 1090 and being known as 165 N. Fairground Street.

Nichole Williams is requesting a variance for allow a play area for a daycare be on the side or front of property because there is no rear yard on this property. The play area will be approximately 50 feet away from Fairground Street and 20 feet from Fort Street.

Mr. Carson asked about the safety measures planned for the property. Ms. Williams stated that there is an existing wrought iron fence around the entire property plus a 4 foot tall chain-link fence planned for the play area.

Mr. Carson asked about the traffic pattern for pickups and drop offs. Ms. Williams stated that the vehicles will use the entrance furthest from the play area. Mr. Carson asked about the traffic on Fairground being affected by isolating traffic to that entrance. Ms. Williams stated she was not aware of any traffic issues in that area. Ms. Williams said the entrance is wide enough for someone to enter and leave at the same time. There will be no cars in the area of the playground and can be blocked off.

Mr. Mills asked whether there was anything between the building and the play area. Ms. Williams stated that she has considered a chain-link fence that would lead the students from the building to the play area. However, the State only requires two teachers be present.

Mr. Carson asked how many children will be in attendance. Ms. Williams stated 43-45 children with 10 employees.

Mr. Carson reiterated his concern that parents will use any open space for parking if it's available and Mr. Mills stated that he would like to see a barrier between the cars and children – either a hedgerow for fence.

Mr. Carson made a motion to approve the variance request with the following stipulations:

1. The play area be placed as far from Fairground Street as feasibly possible, without encroaching into the twenty foot buffer

2. The installation of a chain-link fence leading from the play area to the building so cars cannot get close to the play area

The rationale for granting the application being that it will not be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare.

The motion was seconded by Mr. Mills.

VOTE: 5-0-0

A motion was made by Board member Steven A. Carson, seconded by Board member James A. Mills, that this matter be Approved as Stipulated. The motion carried by the following vote: 5 – 0 – 0

Absent: 1 - Board member Grant

20110174

V2011-11 Danny Lankford (McDonald's Corporation)

V2011-11 [VARIANCE] DANNY LANKFORD request a variance for property located in Land Lot 09320, District 16, Parcel 0120 and being known as 1291 Bells Ferry Road. Variance to allow 16.6 s.f. of signage each on two building faces that do not abut a public roadway. Ward 4.

File 20110174 (V2011-11) was presented by Mr. Roth for property located in Land Lot 09320, District 16, Parcel 0120 and being known as 1291 Bells Ferry Road.

Danny Lankford presented the variance application to allow signage on the sides of the building above the door. The two signs together take up less than 2% of the whole wall. The McDonald's arch is standard branding with a "Welcome" sign to show customers where to go from the parking lot. Mr. Lankford went on to state that the signs are unobtrusive, reasonably sized for the wall, and not a visual nuisance.

J.M. Owens spoke in support of the request. He and his wife have owned it for over twenty years; this is the 3rd remodel. Although this property is not the brightest spot, they have continued to put money into the facility. Mr. Owens stated that they paid \$125,000 in sales tax last year and payroll of \$500,000.

Chairman Lowman asked about building's veneer. Mr. Owens stated it is brick and EIFS. Chairman Lowman stated they are not really trying to attract new business but say "Welcome to McDonalds." Owens thinks it adds to the final appearance of the building.

Mr. Mills asked if emblem will be lit. Mr. Owens stated that it will be illuminated.

*Mr. Dye made a motion to deny the request, seconded by Mr. Carson.
VOTE: 2-3-0 (failed)*

*Chairman Lowman made a motion to approve the request with the rationale being that the signage is minimal and it does not establish the type of precedent they wish to avoid. Mr. Mills seconded the motion.
VOTE: 3-2-0*

A motion was made by Board member J. K. Lowman, seconded by Board member James A. Mills, that this matter be Approved and Finalized. The motion carried by the following vote: 3 – 2 – 0

Absent: 1 - Board member Grant

Vote Against: 2 - Board member Dye, and Board member Carson

OTHER BUSINESS:

20110227

Board of Zoning Appeals - Election of Chairman

Election of Chairman to serve for one year from April 2011 to April 2012.

Mr. Dye nominated Mr. Mills to the chairman position.

*Mr. Bishop made a motion to approve Mr. Mills as Chairman, seconded by Mr. Carson.
VOTE: 4-0-1 (Mr. Mills abstained)*

A motion was made by Board member Neil Bishop, seconded by Board member Steven A. Carson, that this matter be Recommended for a Resolution . The motion carried by the following vote:

Absent: 1 - Board member Grant

Abstain: 1 - Board member Mills

20110228**Board of Zoning Appeals - Election of Vice Chairman**

Election of Vice Chairman to serve for one year from April 2011 to April 2012.

Mr. Carson nominated Chairman Lowman to the vice-chairman position.

Mr. Dye made a motion to approve Chairman Lowman as Vice-Chairman, seconded by Mr. Bishop.

VOTE: 4-0-1 (Chairman Lowman abstained)

A motion was made by Board member G. Marshall Dye, seconded by Board member Neil Bishop, that this matter be Recommended for a Resolution . The motion carried by the following vote:

Absent: 1 - Board member Grant

Abstain: 1 - Board member Lowman

ADJOURNMENT:

Meeting adjourned at 7:08 p.m.

J. K. LOWMAN, CHAIRMAN

SHELBY LITTLE, SECRETARY